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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

Debtor.

Case No. BK-S-06-10725-LBR

CHAPTER 11

**OBJECTION OF USACM
LIQUIDATING TRUST TO PROOF
OF CLAIM NO. 10725-00398-3 IN
THE AMOUNT OF \$200,000 BY
WALLS FAMILY TRUST DATED
12/10/97; AND CERTIFICATE OF
SERVICE**

Date of Hearing: November 15, 2011
Time of Hearing: 9:30 a.m.
Estimated Time for Hearing: 10 Minutes

The USACM Liquidating Trust (the “USACM Trust”) recently discovered approximately 140 proofs of claim (“POC’s”) that had not been properly entered into the database of Sierra Consulting Group, LLC (“Sierra”) and, therefore, had not been included in the loan by loan objections filed by the USACM Trust. The POC’s contain claims that arise from investments in loans that the USACM Trust has already processed. Accordingly, where appropriate the USACM Trust is objecting to these remaining POC’s on a claim by claim basis.

Pursuant to § 502 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the USACM Trust requests an order disallowing in full Proof of Claim No. 10725-00398-3 (the “Subject Proof of Claim”) filed by Joseph P. Walls and

Ellen Walls Trustees for the Walls Family Trust Dated 12/10/97 (the “Walls Family Trust”) against USA Commercial Mortgage Company (“USACM”) in the amount of \$200,000.¹

Here, the Subject Proof of Claim is based entirely upon a \$200,000 investment in the Eagle Meadows Loan. On June 27, 2011, the USACM Trust filed omnibus objections seeking to disallow Direct Lender claims arising out of the Eagle Meadows Loan. On July 26, 2011, the Court heard and sustained the omnibus objections.² The USACM Trust now seeks the same treatment for the Subject Proof of Claim.

In support of the Eagle Meadows omnibus objections, the USACM Trust filed the Declaration of Geoffrey L. Berman (the “Berman Decl.”). [DE 8571]. The Berman Decl. is also cited below to support this Objection. Thus, the Trust will serve a copy of the Berman Decl. on the claimant with this Objection.³

THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE DIRECT LENDER’S RIGHT TO REPAYMENT FROM THE BORROWER OR TO SHARE IN ANY PROCEEDS GENERATED FROM THE SALE OF REAL PROPERTY SECURING THE LOAN AT ISSUE.

MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION

The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

¹ In compliance with Nevada LR 3007, a copy of the first page of the Subject Proof of Claim is attached as **Exhibit A**

² See, e.g., DE 9038.

³ To avoid confusion, the hearing date shown on the Berman Decl. will be redacted and Exhibit A will be omitted. Exhibit A to the Berman Decl. lists the Direct Lenders whose claims were affected by the Eagle Meadows omnibus objections. Those Direct Lender claims have no relevance to this Objection.

1 The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and
2 Bankruptcy Rule 3007.

3 **II. APPLICABLE AUTHORITY**

4 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
5 will be allowed unless a party in interest objects. If a party in interest objects to the proof
6 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
7 shall allow the Claim except to the extent that the Claim is “unenforceable against the
8 debtor . . . under any . . . applicable law for a reason other than because such claim is
9 contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is
10 presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof
11 of claim controverts the presumption, the creditor ultimately bears the burden of
12 persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*
13 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.
14 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996).

15 **III. BACKGROUND FACTS**

16 **a. The USACM Bankruptcy**

17 On April 13, 2006 (“Petition Date”), USACM filed a voluntary petition for relief
18 under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as
19 debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
20 Debtor’s post-petition management of the Debtor was under the direction of Thomas J.
21 Allison of Mesirow Financial Interim Management, LLC, who served as the Chief
22 Restructuring Officer.

23 USACM was a Nevada corporation that, prior to the Petition Date, was in the
24 business of underwriting, originating, brokering, funding and servicing commercial loans
25 primarily secured by real estate, both on behalf of investors and for its own account. That
26 business included the solicitation of investors to purchase fractional interest in loans that

1 USACM originated and then serviced. These investors are referred to as “Direct Lenders”
2 in USACM’s bankruptcy case and in this Objection.

3 On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third
4 Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.
5 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this
6 Court, USACM sold the servicing rights to most of the loans it serviced to Compass
7 Partners, LLC and Compass Financial Partners, LLC (“Compass”), including the Eagle
8 Meadows Loan. The sale to Compass closed on February 16, 2007.

9 The USACM Trust exists as of the Effective Date of the Plan, which was March 12,
10 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the
11 successor to USACM with respect to standing to seek allowance and disallowance of
12 Claims under 11 U.S.C. § 502(a).

13 Upon information derived from filings in the United States District Court, District
14 of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA SPE, LLC,*
15 *et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that “Silar Advisors, LP
16 (“Silar”) financed Compass’ acquisition of the Purchased Assets, including the loan
17 service agreements in the USACM bankruptcy case and took a secured interest in those
18 Purchased Assets by executing a Master Repurchase Agreement (“Repurchase
19 Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of
20 Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

21 Further, from filings in the same action, the Trust believes that “Effective as of
22 September 26, 2007, Silar foreclosed on Compass through Asset Resolution LLC (“Asset
23 Resolution”) and took ownership of the Purchased Assets. ... Silar created Asset
24 Resolution as a ‘single purpose entity,’ conveyed all of its interests in the Repurchase
25 Agreement to Asset Resolution, and Asset Resolution properly foreclosed on the assets of
26 Compass, including the Purchased Assets.” (Citations omitted.) Asset Resolution LLC is

now a debtor in a chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-RCJ, along with certain affiliates.⁴ By Order entered on July 19, 2010 by the Hon. Robert C. Jones in the Asset Resolution Case, the servicing rights for 19 loans were transferred to Cross, FLS. The Eagle Meadows Loan, was among the loans whose servicing rights were transferred to Cross, FLS.

The Trust has attempted to monitor loan collections through monitoring the district court litigation and the ARC bankruptcy case, but has received limited information concerning servicing and resolution of direct loans by Compass/Silar/Asset Resolution or their successors, including the trustee in bankruptcy for Asset Resolution. The Trust's legal counsel has been in contract with Cross FLS about certain loans that it is servicing, including the Eagle Meadows Loan. The following is the extent of the USACM Trust's information on the current servicing and status of the Eagle Meadows Loan.

b. The Eagle Meadows Loan

USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as "Eagle Meadows Development, Ltd." ("Borrower").⁵ A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. (Berman Decl., ¶ 4.) The total loan amount proposed was \$35,630,000. The Offer Sheet described the investment as a "First Trust Deed Investment" and noted that the investment would be secured by a first deed of trust on 479 acres generally known as Fox Hills Phase II, the second phase of a master planned community that had begun the entitlement process, and was situated on Interstate 5 and State Route 152. The Offer Sheet further stated that the loan to value was

⁴ 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC, Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP Eagle Meadows SPE LLC, and Shamrock SPE LLC.

⁵ The name of the borrower on the Offer Sheet is a different entity from the actual borrowing entities that signed the loan agreement.

1 approximately 50% based upon comparable acreage sold in the area and stated that an
2 appraisal had been ordered.⁶ Pursuant to the Offer Sheet, the loan was intended to
3 restructure existing debt and to acquire an additional 40 acre parcel.

4 On October 19, 2005, Borrower made and delivered to various lenders a
5 “Promissory Note Secured by Deed of Trust” (the “Note”) and a Loan Agreement.
6 (Berman Decl., ¶ 5.) The Note and Loan Agreement provided for a loan of \$29,600,000,
7 with potential subsequent increases up to \$35,630,000. The Note was secured by a “Deed
8 of Trust, Assignment of Rents, Security Agreement and Fixture Filing” from the Borrower
9 in favor of the Direct Lenders that was recorded in the official records of Merced County,
10 California on November 9, 2005 at Instrument Number 05-89765, as were subsequent
11 amendments to the Deed of Trust to secure subsequent advances. The Note was also
12 supported by an Unconditional Guaranty executed by Kent Hoggan and Catamount
13 Management, LLC on October 19, 2005.

14 The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows
15 that Borrower was “Non-performing” on the Note as of July 31, 2006. (Berman Decl., ¶
16 6.) During this bankruptcy case through the transfer of servicing to Compass, USACM
17 treated the Direct Lenders with respect to any interim payments by the borrower in
18 accordance with this Court’s orders.

19 Counsel for the Trustee has been advised by a representative of Cross FLS that the
20 accrued taxes on the property currently exceed the value of the property for the Eagle
21 Meadows Loan. Cross FLS has been told by brokers that there is no interest in purchasing
22 the land for development (as had originally been planned), and that no such interest is
23 anticipated. Consequently, Cross FLS has marketed the property’s water rights and has
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25
26 ⁶ Although the Offer Sheet said that an appraisal had been ordered, counsel for the Trust has been unable to locate an appraisal.

1 entered into a contract with a buyer, however, that sale has stalled due to the taxes on the
2 property. The guarantor has filed for bankruptcy.

3 IV. OBJECTION

4 The Eagle Meadows Loan appears to have been a legitimate, arms-length
5 transaction with a third party borrower. USACM did not guaranty the loan. In addition,
6 the Direct Lenders took an obvious risk by investing in a promissory note secured by a lien
7 on real property. USACM objects because it is not liable for the Borrower's default or any
8 decrease in the value of the collateral.

9 The Walls Family Trust fails to state a claim because USACM does not appear to
10 have breached the loan servicing agreements with respect to collection of the Eagle
11 Meadows Loan.

12 This objection will not affect the Walls Family Trust's right to be repaid on the
13 Eagle Meadows Loan by the Borrower, to recover from the sale of any collateral that
14 secured the Eagle Meadows Loan, or to recover on the guaranty supporting the Eagle
15 Meadows Loan.

16 V. CONCLUSION

17 Based on the foregoing, the USACM Trust objects to Proof of Claim No. 10725-
18 00398-3 in the amount of \$200,000 and asks that the Court disallow it in full. The
19 USACM Trust also requests such other and further relief as is just and proper.

20 DATED this 21st day of September, 2011.

21 LEWIS AND ROCA LLP

22
23 By /s/ John Hinderaker (#18024)
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John C. Hinderaker, AZ 18024 (*pro hac vice*)
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Attorneys for the USACM Liquidating Trust

LEWIS
AND
ROCA
LLP
LAWYERS

1 Copy of the foregoing and the supporting
2 declaration by Geoffrey Berman [DE 8571]
3 with hearing date redacted and
4 Exhibit A to the declaration omitted
5 mailed by first class postage prepaid
6 on September 21, 2011 to:

7 Walls Family Trust Dtd 12/10/97
8 C/O Joseph P & Ellen Walls Ttees
9 2778 Bedford Way
10 Carson City, NV 89703-4618

11 LEWIS AND ROCA LLP

12 /s/Renee L. Creswell
13 _____
14 Renee L. Creswell
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